

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	
	)	Chapter 11
SEARS HOLDINGS CORPORATION, <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 18-23538 (RRD)
Debtors.	)	
	)	(Jointly Administered)

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**DECLARATION OF DAN GAARDSMOE IN SUPPORT OF THE OBJECTION  
OF CISCO SYSTEMS, INC. TO THE PROPOSED ASSUMPTION OF CERTAIN  
EXECUTORY CONTRACTS AND CURE COSTS, ASSIGNMENT OF CERTAIN  
EXECUTORY CONTRACTS, AND RESERVATION OF RIGHTS**

I, Dan Gaardsmoe, declare as follows:

1. I am the Manager of Management Operations for Cisco Systems, Inc.

("Cisco Systems") and I am authorized to execute this Declaration on behalf of Cisco

Systems. If called to testify, I could and would competently testify to the facts set forth

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

herein based on my personal knowledge of those facts, events and transactions.<sup>2</sup>

2. Cisco Systems is a California corporation and, among other activities, it manufactures equipment and provides software application services (collectively, the “**Cisco Systems Services**”) to Cisco Systems’ business customers. (individually, a “**Cisco Systems Customer**” and, collectively, “**Cisco Systems Customers**”).

3. This declaration is filed in support of the *Objection Of Cisco Systems, Inc. To The Proposed Assumption Of Certain Executory Contracts And Cure Costs, Assignment Of Certain Executory Contracts, And Reservation Of Rights* (the “**Cure Objection**”) filed by Cisco Systems with respect to the possible assumption by the Debtors of those certain executory contract to which the Creditors are a counterparty (as hereinafter identified).

#### MAINTENANCE OF BUSINESS RECORDS

4. In my official capacity, I have personal knowledge of the method by which Cisco Systems maintains permanent records of its transactions (individually, a “**Transaction**” and, collectively, the “**Transactions**”) with its customers and, thereupon, I declare and state that Cisco Systems maintains permanent records of all Transactions in a computerized accounting system. All amounts due and owing to Cisco Systems with respect to any Transaction with a Cisco Systems Customer including, but not limited to, payments related to the Services, taxes, interest owed with respect to any Service or agreement, fees, and other charges (individually, an “**Obligation**” and, collectively, the “**Obligations**”), are entered in this accounting system at, or near, the time such Obligations are incurred. Likewise, all payments made by a Cisco Systems Customer with respect to any Obligation or Transaction, and all other credits and debits related to any Obligation or Transaction, are entered in this accounting system at, or near, the time such payment is

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<sup>2</sup> Capitalized terms used in this Declaration, but which are not defined herein, shall have the meanings ascribed to them in the Cure Objection filed concurrently herewith.

received and/or such credit or debit is made or incurred. Each such entry is made in the regular course of business by employees of Cisco Systems who process these payments, receipts, credits, and debits. If necessary, Cisco Systems can print hard copies of all entries.

5. I have personal knowledge of the manner by which Cisco Systems maintains records of its written contracts, statements of work, schedules and any other documents related to such contracts, and all amendments to any contract, statement of work, schedule, and/or any other document (individually, a “**Cisco Systems Agreement**” and, collectively, the “**Cisco Systems Agreements**”) with its Customers. As a regular part of its business, Cisco Systems maintains permanent records of the Cisco Systems Agreements and these records are compiled at the time, or near the time, that a Cisco Systems Agreement is received or processed.

#### CISCO SYSTEMS CONTRACT

6. I have personally reviewed Cisco Systems’ records relating to the Debtors, including the Transactions, the Obligations and the Cisco Systems Agreements, and I am personally familiar with Cisco Systems’ Account with certain of the above-named Debtors.

7. The Debtors (as identified below) entered into those certain Cisco System Agreements, orders and other contracts (collectively, the “**Cisco Systems Orders**”)<sup>3</sup> whereby (a) the named Debtors ordered Cisco System Services to be provided by Cisco Systems and thereby became obligated to pay the aggregate full contract amount for such services, and (b) Cisco Systems became obligated to provide the Cisco System Services to the Debtors.

8. The terms and conditions applicable to the Cisco System Services that are

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<sup>3</sup> The Cisco Orders are listed on the “Cisco Cure Amount Summary” which is attached hereto as Exhibit A, and incorporated by reference herein as if fully set forth.

subject to the above-referenced Cisco Systems Orders are set forth in the *Master Procurement Agreement*, dated November 30, 2009, as amended from time to time, by and between Debtors and Cisco Systems, (the “**MPA**”, the MPA together with the Cisco Systems Orders constitute the “**Cisco Systems Contract**”). Due to the confidentiality provisions contained within the Cisco Systems Contract, a copy of the Cisco Systems Contract is not attached hereto. However, a copy will be made available to the Debtors and the Committee in the event any response is filed to this Cure Objection or to assist in reconciling the amount of the Cisco Systems Cure Amount (as hereinafter identified).

**BANKRUPTCY CASE**

9. Based upon information and belief, I am informed that, on October 15, 2018 (the “**Petition Date**”), each of the above-captioned Debtors (collectively, the “**Debtors**”) filed their individual, voluntary petitions in the above-captioned Court (the “**Court**”) seeking relief under Chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

10. Based on information and belief, I am informed that, on November 1, 2018, the Debtors filed their motion seeking, among other things, procedures for the sale of certain assets and the assumption of certain executory contracts and unexpired leases (the “**Global Bidding Procedures Motion**”).<sup>4</sup>

11. Based on information and belief, I am informed that, on November 19, 2018, the Court entered its *Order Approving Global Bidding Procedures and Granting Related Relief* (the “**Global Bidding Procedures Order**”) (ECF No. 816), approving global bidding and sale procedures (the “**Global Bidding Procedures**”), in connection with the sale or disposition of substantially all of the Debtors’ assets (the “**Assets**”).

12. Based on information and belief, I am informed that, on January 14, 2019,

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<sup>4</sup> See *Notice of Hearing on Debtor’s Motion for Approval of Global Bidding Procedures* and the *Debtors’ Motion for Approval of Global Bidding Procedures* [ECF 429].

the Debtors commenced an auction for the sale of the Global Assets (the “**Auction**”). At the conclusion of the Auction, the Debtors (as directed by the Restructuring Committee) determined that the offer submitted by Transform Holdco, LLC (the “**Successful Bidder**” or “**Buyer**”) (which was established by ESL Investments, Inc. to acquire substantially all of the Global Assets) was the highest or best offer for the Global Assets (the “**Successful Bid**”).<sup>5</sup> The Debtors executed an asset purchase agreement with the Buyer for purchase of the Acquired Assets (as defined in the Asset Purchase Agreement dated January 17, 2019) (the “**Asset Purchase Agreement**,” and the transaction effected thereby, the “**Global Asset Sale Transaction**”).

13. Based upon information and belief, I am informed that, on January 18, 2019, the Debtors filed their notice (the “**Initial Cure Notice**”)<sup>6</sup> that identifies the executory contracts and unexpired leases that it may assume and assign pursuant to the pending Global Asset Sale Transaction, and the monetary defaults (the “**Cure Costs**”) with respect to such contracts and leases that it contends must be cured as a condition of assuming a specific contract or lease. Among other executory contracts and unexpired leases, the Cure Notice identifies the following executory contract and related Cure Amount:

Debtor	Counterparty	Contract Type	Execute Date	Terminate Date	Contract No.	Cure Amount
Sears Holding Management Corporation	Cisco Systems, Inc.	IT-Cisco Systems, Inc. – Master Procurement Agreement	11/30/2000	6/29/2022	SHCLCW52	US\$ 424,905
Sears Holding Management Corporation	Cisco Systems, Inc.	Amendment 4 to MPA - 2018	8/1/2018	7/31/2019	CW2338855	US\$ 0.00

14. Based upon information and belief, I am informed that, on January 23, 2019, the Debtors filed a supplemental notice (the “**Supplemental Cure Notice**”) identifying certain executory contracts and unexpired leases that may be assumed and assigned in

<sup>5</sup> See Notice of Successful Bidder and Sale Hearing [ECF 1730].

<sup>6</sup> See Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction [ECF 1731].

connection with the Global Sale Transaction and Cure Costs related to such contracts and leases.<sup>7</sup> The Supplemental Cure Notice does not identify the Cisco Systems Contract as an additional executory contract that may be assumed and assigned, or indicate that the Cure Costs due and owing with respect to the Cisco Systems Contract differ from the Cure Costs identified in the Initial Cure Notice.

#### CURE AMOUNT

15. Based upon my review of Cisco Systems' books and records pertinent to the Debtors' account, I declare and state that (a) the Debtors (including, without limitation, Sears Holding Management Corporation) have failed to pay all Fees due and owing pursuant to the Cisco Systems Contract, and (b) more specifically, as of the date this Declaration is executed, not less than **US\$ 519,160.56** (the "**Cisco Systems Cure Amount**") is past due and owing to Cisco Systems pursuant to the Cisco Systems Contract. A summary of the Cisco Systems Cure Amount (the "**Cisco Systems Cure Amount Summary**") is attached hereto as Exhibit A and incorporated by reference herein as if fully set forth. Copies of the Invoices are not attached hereto due to the confidentiality provisions contained within the Cisco Systems Contract. However, copies may be made available to the Debtors upon request.

16. In addition to the Cisco Systems Cure Amount, the aggregate amount of US\$ 171,330.38 (the "**February 2019 Obligation**") will come due as follows: (a) on February 1, 2019, US\$ 94,703.02, will become due and owing; and (b) on February 6, 2019, US\$ 76,627.36 will become due and owing. Further, in addition to the Cisco Systems Cure Amount and the February 2019 Obligation, additional amounts may accrue with respect to Cisco Systems Services that are provided through the end of the term of the

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<sup>7</sup> See Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases In Connection With Global Sale Transaction (the "Supplemental Cure Notice") [ECF 1774].

Cisco System Contract.

I declare under penalty of perjury that the foregoing is true and correct. Executed  
this \_\_\_\_ day of January 2019 at San Francisco, California

*Daniel Gaardsmoe*

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**Dan Gaardsmoe**